

# NORTHWEST ENVIRONMENTAL ADVOCATES



October 6, 2016

## FREEDOM OF INFORMATION ACT REQUEST

FOIA OFFICER

National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3)  
Room 9719  
Silver Spring, Maryland 20910

*Submitted Via: FOIAOn-Line*

**Re: EPA Endangered Species Act §7 Consultation for Conditional Approvals of State Submitted Water Quality Standards**

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, et seq., we are writing to request the disclosure of public documents within the control of your agency. I make this request on behalf of the Northwest Environmental Advocates (NWEA).

NWEA is a regional non-profit environmental organization founded in 1969 and dedicated to preserving and protecting natural resources in the Northwest and across the nation. NWEA works through advocacy, litigation, and education to protect and restore water and air quality, wetlands and wildlife habitat. NWEA has a long history of interest and involvement in environmental issues, in particular, using Clean Water Act programs to restore and maintain water quality for the protection of human health, fish, and wildlife.

This request concerns instances in which the U.S. Environmental Protection Agency (EPA) has approved California's submittals of new and revised water quality standards pursuant to the Clean Water Act § 303(c). Of particular relevance to us are documents relating to specific water quality standards for which EPA has initiated or has stated that it will initiate consultation under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, with the National Marine Fisheries Service (NMFS) but where, as far as NWEA is aware, NMFS and EPA have not yet completed that consultation.

### **I. FOIA Request**

Please provide all documents regarding ESA §7 consultation (including formal, informal, and national) between NMFS and the EPA as they relate to the following amendments to California's water quality standards:

1. Amendment to the Water Quality Control Plan, Los Angeles Region for the coastal watersheds of Los Angeles and Ventura Counties which updated the ammonia water quality objectives and implementation procedures for inland surface waters, enclosed bays, and estuaries which are characteristic of freshwater and support aquatic life,

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[www.NorthwestEnvironmentalAdvocates.org](http://www.NorthwestEnvironmentalAdvocates.org)

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- adopted by the Los Angeles Regional Water Quality Control Board on April 25, 2002 (Regional Board Resolution No. 2002-011), as corrected by the Regional Board Executive Officer in a memorandum dated February 4, 2003. *See* Exhibit 1 (June 19, 2003 EPA approval letter of amendment, noting that EPA had entered into informal consultation with FWS and NMFS).
2. Amendment to the Water Quality Control Plan, Los Angeles Region for the coastal watersheds of Los Angeles and Ventura Counties which updates ammonia water quality objectives and implementation procedures applicable to inland surface waters not characteristic of fresh water with beneficial use designations for the protection of aquatic life, adopted by the Los Angeles Regional Water Quality Control Board on March 4, 2004 (Regional Board Resolution No. 2004-022). *See* Exhibit 2 (May 19, 2005 EPA approval letter of amendment, noting that EPA has entered into national consultation with FWS and NMFS on CWA section 304(a) ambient water quality criteria protecting aquatic life).
  3. Amendment to the Water Quality Control Plan for the San Francisco Bay Region that revises water quality objectives for mercury in San Francisco Bay, adopted by the California Regional Water Quality Control Board, San Francisco Bay Region under Resolution R2-2006-0052 on August 9, 2006. *See* Exhibit 3 (February 12, 2008 EPA approval letter of amendment, noting that EPA initiated informal consultation with FWS and NMFS on January 24, 2008).
  4. Amendment to the Water Quality Control Plan for the San Francisco Bay Region to adopt site-specific marine aquatic life water quality objectives for cyanide in San Francisco Bay, adopted by the California Regional Water Quality Board, San Francisco Bay Region on December 16, 2006 under Resolution R2-2006-0086. *See* Exhibit 4 (July 22, 2008 EPA approval letter of amendment, noting that in August 2006 EPA initiated informal consultation with FWS and NMFS and specifically referencing correspondence related to the consultation in footnote 2).
  5. Amendments to Water Quality Control Plan for the San Francisco Bay Region revising freshwater water quality objectives for mercury in Walker Creek and Soulajule Reservoir, and all freshwater tributary waters to Walker Creek and Soulajule Reservoir, adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, under Resolution R2-2007-0010 on January 23, 2007. *See* Exhibit 5 (September 29, 2008 EPA approval letter of amendment, noting that EPA initiated information consultation with USFWS on August 11, 2008 and with NMFS on August 12, 2008).
  6. Amendment to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins to add a plan for the control of methylmercury and total mercury in the Sacramento-San Joaquin Delta Estuary, adopted by the Central Valley Regional Water Quality Control Board on April 22, 2010 under Regional Board Resolution No. R5-2010-0043. *See* Exhibit 6 (EPA approval letter, noting EPA was consulting with FWS and NMFS but that EPA was deferring further consultation on the approval pending completion of consultation on national CWA section 304(a) criteria).
  7. Basin Plan Amendment to the Water Quality Control Plan for the North Coast Region to establish exception criteria to point source waste discharge prohibitions and adding a new

- action plan for low threat discharges, adopted by the North Coast Regional Water Quality Control Board on July 23, 2009. *See* Exhibit 7 (April 9, 2012 EPA approval letter, noting that EPA was presently preparing Biological Evaluations and requests for concurrences for FWS and NMFS, and that it anticipated completing consultation in the near future).
8. Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate an averaging period for chloride water quality objectives in Reaches 4B, 5, and 6; to incorporate new site specific objectives for chlorine in Reaches 5 and 6; and to revise the total maximum daily load for chloride in the Upper Santa Clara River, adopted by the Los Angeles Regional Water Quality Control Board on October 9, 2014 under Resolution No. R14-10, and approved by the State Water Resources Control Board on December 16, 2014 with OAL certification on March 18, 2015. *See* Exhibit 8 (April 28, 2015 EPA approval letter, noting that EPA initiated consultation with FWS and NMFS on April 22, 2015 regarding the chloride criteria adopted in the amendment).
  9. Amendment to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins that establishes new water quality objectives for diazinon in the Sacramento and Feather Rivers, adopted by the Central Valley Regional Water Quality Control Board on October 16, 2003 under Resolution No. R5-2003-0148 and approved by the State Water Resources Control Board on April 22, 2004 under Resolution No. 2004-0022 and by the California Office of Administrative Law on June 9, 2004. *See* Exhibit 9 (August 11, 2004 EPA approval letter, noting that on October 6, 2003 EPA initiated informal consultation with FWS and NMFS).
  10. Amendment to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins that establishes new water quality objectives for diazinon and chlorpyrifos in the lower San Joaquin River, adopted by the Central Valley Regional Water Quality Control Board on October 21, 2005 under Resolution No. R5-2005-0138 and approved by the State Water Resources Control Board on May 2, 2006 under Resolution No. 2006-0025 and the California Office of Administrative Law on June 30, 2006. *See* Exhibit 10 (December 20, 2006 EPA approval letter, noting that EPA Region 9 initiated informal consultation with FWS and NMFS on September 22, 2006).
  11. State Water Resources Control Board's Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits, adopted by the State Water Board on April 15, 2008 and approved by the State Office of Administrative Law on June 26, 2008. *See* Exhibit 11 (August 27, 2008 EPA approval letter, noting that EPA initiated informal consultation with FWS and NMFS on August 11, 2008).
  12. Amendment to the Water Quality Control Plan for the San Francisco Bay Region that establishes water quality objectives for copper in portions of San Francisco Bay, adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on June 13, 2007 under Resolution R2-2007-0042, and approved by the California State Water Resources Control Board on January 15, 2008 under Resolution No. 2008-0005 and the California Office of Administrative Law on May 13, 2008, OAL File No. 2008-0401-02S. *See* Exhibit 12 (January 6, 2009 EPA approval letter, noting that EPA initiated informal consultation with FWS on November 10, 2008 and with NMFS on September 2, 2008).

13. Amendment to the Water Quality Control Plan for the Los Angeles Region to adopt site-specific objectives for ammonia in select water bodies of the Santa Clara River, Los Angeles River, and San Gabriel River Watersheds, adopted by the Los Angeles Regional Water Quality Control Board on June 7, 2007 under Resolution No. R4-2007-005 and approved by the State Water Resources Control Board on January 15, 2008 under SWRCB Resolution No. 2008-004 and the California Office of Administrative Law on May 12, 2008. *See* Exhibit 13 (EPA approval letter, noting that EPA Region 9 initiated informal consultation with FWS and NMFS on July 21, 2008).
14. Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, as approved by the State Board in the following resolutions: SB Res. 90-28 (adopted by State Board on March 22, 1990); SB Res. 90-20 (adopted by State Board on February 15, 1990); and SB Res. 95-12 (adopted by State Board on February 16, 1995). *See* Exhibit 14 (EPA approval letter, noting that EPA initiated consultation with FWS and NMFS).
15. Amendment to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins to revise water quality objectives for pH and turbidity for all waters covered by the Basin Plan, adopted by the California Regional Water Quality Control Board under Resolution No. R5-2007-0136 on October 25, 2007, and approved by the California State Water Resources Board on September 2, 2008 under Resolution No. 2008-0061 and the California Office of Administrative Law on December 1, 2008. *See* Exhibit 15 (July 7, 2009 EPA approval letter, noting that EPA initiated informal consultation with FWS and NMFS on June 11, 2009).
16. Request by the Los Angeles Regional Water Quality Control Board and the California State Water Resources Control Board to provide compliance schedules consistent with the waste load allocations based on California Toxics Rule criteria, based on the State's Total Daily Maximum Load for toxic pollutants in Dominguez Channel and the Greater Los Angeles and Long Beach Harbor Waters adopted by the Regional Board as Resolution No. R11-008 on May 5, 2011. *See* Exhibit 16 (November 8, 2012 EPA approval letter, noting that EPA had initiated consultation with FWS and NMFS).
17. Request for authority to provide compliance schedules consistent with the waste load allocations based on the California Toxics Rule criteria, based on the State's total daily maximum load for organochlorine pesticides, polychlorinated biphenyls, and siltation in Calleguas Creek, its tributaries, and Mugu Lagoon (CCW Toxics TMDL), and for the State's total daily maximum load for metals selenium in Calleguas Creek, its tributaries, and Mugu Lagoon (CCW Metals TMDL), adopted by the Los Angeles Regional Water Quality Control Board as Resolution No. RB2005-10 on July 7, 2005 (CCW Toxics TMDL); and as adopted by the Los Angeles Regional Water Quality Control Board as Resolution No. RB2006-02 on June 8, 2006 (CCW Metals TMDL). *See* Exhibit 17 (June 20, 2014 EPA approval letter, noting that EPA has initiated consultation with FWS and NMFS).
18. Amendments to the Water Quality Control Plan for Ocean Waters of California to Control Trash and Part 1 Trash Provisions of the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries of California, adopted by the California Water Resources Control Board under Resolution No. 2015-0019 on April 7, 2015. *See*

Exhibit 18 (January 12, 2016 EPA approval letter, noting that EPA has initiated consultation with FWS and NMFS)

19. Amendment to the Water Quality Control Plan for Ocean Waters of California for Water Quality Objectives and Receiving Water Limitation for Salinity, adopted by the California Water Resources Control Board under Resolution No. R5-2015-0033 on May 6, 2015. *See* Exhibit 19 (April 7, 2016 EPA approval letter, noting that EPA requested consultation with NMFS in February, 2016).

## **II. Fee Waiver Request**

We hereby request a waiver of fees for costs incurred in locating and duplicating these materials, pursuant to 5 U.S.C. § 552(a)(4)(iii), because disclosure “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” In addition, disclosure of the information we have requested is in the public interest as it will be used to contribute to the protection of waters in California. For example, we intend to use the information in our work to obtain compliance with the Clean Water Act and the Endangered Species Act, when working with other government agencies, and while providing information to the media and other organizations. NWEA is a non-profit organization with members who live, work, and recreate in California. None of this information is of commercial interest to NWEA as a whole or its members individually. More detailed information supporting this fee waiver justification is provided below.

### **1. Clear statement of NWEA’s interest in the requested documents.**

NWEA is a nonprofit public interest organization with membership throughout the Northwest and nation, including California. It has repeatedly proven itself a leader in protecting water quality and endangered aquatic species, and actively participates in many state and federal agency actions that affect water quality. NWEA specifically works to ensure that state water quality standards are sufficient to meet the Clean Water Act and to protect threatened and endangered species. NWEA’s efforts to protect water resources require ensuring that state and federal agencies comply with federal environmental statutes. The requested information would allow NWEA to remain informed and continue to provide meaningful input in state and federal agency actions to ensure compliance with federal laws and policies.

### **2. The use proposed for the documents and whether NWEA will derive income or other benefits from such use.**

NWEA proposes to use this information to ensure that government agencies comply with the Clean Water Act and the Endangered Species Act in taking action on state water quality standards. As noted above, NWEA will derive no income, either to the organization as a whole or its members individually, from the requested information.

### **3. A statement of how the public will benefit from such use and from the release of the requested documents.**

State and federal compliance with federal environmental statutes is clearly in the public interest. Equally important, NWEA is a necessary informational conduit to the public, the media,

government agencies, and other environmental organizations such as water quality groups, salmon conservation and recovery groups, and organizations focused on protection of endangered species as well as regulatory agencies that carry out the Clean Water Act. In addition, to the best of our knowledge, this information has not been disclosed before and is therefore “new” information. As such, the disclosed information will enhance public understanding to a significant extent.

**4. If specialized use of the documents or information is contemplated, a statement of NWEA’s qualifications that is relevant to the specialized use.**

As a public outreach organization and environmental stakeholders, NWEA is uniquely qualified to use the requested information. NWEA has expertise and interest in ensuring water quality standards meet the requirements of the Clean Water and Endangered Species Acts. For example, NWEA has been a very active participant in states’ triennial reviews for many years, has brought litigation to ensure standards are established in a timely manner and subject to consultation under the Endangered Species Act, and participated in national policy development regarding water quality standards. As with all public information that public interest groups gather, NWEA will use it for public outreach purposes either directly or indirectly. NWEA has proven its ability to effectively disseminate information in a readily understandable form to a diverse public audience through newsletters, public meetings, brochures, educational sessions, websites, and other organizations. Further, the requested information may be used in numerous administrative venues.

**5. A statement indicating how NWEA plans to disseminate the documents or information to the public.**

As stated above, NWEA disseminates public information through newsletters, public meetings, brochures, educational sessions, websites, other organizations, and to the media. The material subject to this request will be used in this fashion.

**6. Any additional information NWEA deems relevant to its request for a fee waiver.**

NWEA relies primarily on small sources of funding to support its day-to-day activities. The cost of acquiring the requested information in the absence of a fee waiver is entirely prohibitive for NWEA and would impair its ability to protect the public interest.

We look forward to your response. Please feel free to contact me at 503/295-0490 if you have any questions about how to respond to this request.

Sincerely,



Nina Bell,  
Executive Director

Attachments: Nos. 1-19 as described above.